

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Duluth Building Trades Health Fund,

Case No.:

Plaintiff,

vs.

COMPLAINT

Plumbing and Heating Solutions Inc.,

Defendant.

JURISDICTION AND VENUE

1. This is an action to enforce an employer's obligation to make contributions to a multiemployer plan and for liquidated damages, interest, and reasonable attorney fees and costs of this action. The Court has jurisdiction over this action under Sections 502 and 515 of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1132 and § 1145, and under Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185(a). Venue is proper in this District under 29 U.S.C. § 1132(e)(2).

PARTIES

2. Plaintiff Duluth Building Trades Health Fund ("the Fund") is a multiemployer employee benefit plan, as defined under Sections 3(3) and (37) of ERISA, 29 U.S.C. §§ 1002(3) and (37). The Plan is administered in Duluth, Minnesota.

3. Defendant Plumbing and Heating Solutions Inc. is a Minnesota corporation and its registered office address is 5360 Lakewood Road, Duluth, Minnesota 55804. Defendant is an employer in an industry affecting commerce as defined in 29 U.S.C. §§ 152(2), (6) and (7), and 29 U.S.C. §§ 1002(5), (11) and (12).

STATEMENT OF CLAIM

4. At all relevant times, Defendant was signatory to a Collective Bargaining Agreement between the Northern Mechanical/Plumbing Contractors Association, Inc. and United Association Local No. 11 (“CBA”) which governed the terms and conditions of employment of the Defendant’s bargaining unit employees.

5. At all relevant times, the CBA required Defendant to pay certain sums per hour to the Fund on behalf of covered employees. At all times material, Defendant employed employees to perform work for which the CBA required contributions to the Fund.

6. At all relevant times, Defendant was bound by the Trust Agreement establishing the Fund as well as Fund’s Collection Policy governing the collection of delinquent contributions. The Fund’s Trust Agreement provides the Fund with the right to audit Defendant’s books and records to determine compliance with Defendant’s contribution obligation to the Fund under the CBA.

7. The Fund’s third-party administrator, Wilson-McShane Corporation, conducted a payroll audit on behalf of the Fund to determine whether Defendant was making contributions in compliance with the CBA. The audit conducted by Wilson-McShane Corporation covered the time period from November 2017 – December 2018.

8. The audit revealed that Defendant failed to pay contributions to the Fund on behalf of one (1) employee for hours worked during the audit period. Pursuant to the audit invoice dated October 14, 2019, Defendant owes the Fund \$3,672.00 in delinquent contributions.

9. Despite demand, Defendant has failed and refused to pay the amount invoiced following the audit.

10. The Fund’s Trust Agreement and Collection Policy provide that employers that are found delinquent in paying contributions to the Fund following an audit shall be assessed interest at the

rate of six percent (6%) per annum and liquidated damages of twenty percent (20%), plus all costs and reasonable attorney fees incurred in connection with the collection of such delinquent contributions.

11. Based on the Fund's audit, and pursuant to the Fund's Trust Agreement, its Collection Policy, and § 502(g)(2) of ERISA, 29 U.S.C. § 1132(g)(2), Defendant owes Plaintiff \$3,672.00 in delinquent contributions, interest in the amount of \$374.98, and liquidated damages in the amount of \$734.40. The total amount owed by Defendant to the Fund as of the date of this Complaint equals \$4,781.38.

WHEREFORE, Plaintiff prays for judgment as follows:

1. Plaintiff prays for judgment against Defendant in the amount of \$4,781.38, plus court costs and reasonable attorney fees.
2. For such further relief as the Court may deem proper and just.

Dated this 3rd day of April 2020

ANDREW, BRANSKY & POOLE, P.A.

s/ Jane C. Poole

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